

KEYWORD: Guideline F

DIGEST: A party's disagreement with the Judge's weighing of the evidence is not sufficient to demonstrate that Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 14-01170.a1

DATE: 09/18/2015

DATE: September 18, 2015

In Re:)
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 -----) ISCR Case No. 14-01170
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)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Mickey Murray, Personal Representative

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 13, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided on the written record. On June 29, 2015, after the close of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip S. Howe denied Applicant’s request for a security clearance. Applicant appealed, pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge’s decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge’s unfavorable security clearance decision.

The Judge made the following findings: Applicant owes 12 delinquent debts totaling more than \$125,000, which she began to acquire in 2003. She blames the medical costs of her two sons for her delinquencies but does not show how they adversely affected her ability to repay debts, nor has she explained the origin of the debts. Also, she claimed to be working to “alleviate” her indebtedness but did not state specifically what she did to effectuate debt resolution on a continuing basis. A 2015 credit report shows about \$742,000 of debt extant. Not listed in the SOR are 10 educational loans totaling about \$184,000, all but one deferred from payment until 2018. The tenth loan starts in 2016. The size of these debts coupled with her other delinquent debts is exceedingly large. Applicant has a loan trial modification agreement dating from early 2015 on a \$447,000 mortgage with a delinquency of approximately \$10,000 which is 120 days past due. Applicant claims she has made two payments on the modification agreement, but she did not submit any documentary verification of payments.

Applicant does not state her salary so there is no way of knowing if she can afford the payments on the debts in the SOR and the educational loan debts. Applicant did not submit a personal financial statement as part of her Answer or Response. Applicant wrote in her response to the SOR that she received financial counseling but did not submit proof of any such education.

The Judge reached the following conclusions: Applicant could claim circumstances beyond her control as a matter in mitigation regarding her outstanding delinquent debt if the medical problems of her children were shown by her to have a substantial effect on her ability to repay. They were not. Applicant did not demonstrate that she acted responsibly in resolving these large amounts of debts. She was an adult when she incurred the debts. She has taken some small action on her mortgage to resolve that delinquent debt. The other debts are not addressed in a meaningful manner. This inaction leaves her vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of her financial obligation. Her lack of substantial action continues to this day and is voluntary. Applicant displayed a lack of good judgment incurring the debts. Next, she exhibited a continued lack of appropriate judgment by failing to make regular payments on her delinquent debts during the past 12 years without a persuasive explanation of how she got into the financial difficulty and how she intends to resolve the debts on a regular basis. Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations.

Applicant lists a series of facts she claims are errors in the Judge’s decision, and offers a number of corrections. It appears, however, that the majority of material listed in this part of Applicant’s brief contains updated information on Applicant’s finances and her efforts to retire debts. This information was not made part of the record below. The Board cannot consider new evidence on appeal. Directive ¶ E3.1.29.¹ To the extent that there are errors in the Judge’s fact finding, after a review of the record, the Board concludes that these errors concern small details on matters not directly relevant to Applicant’s overall financial posture. On the facts related most directly to Applicant’s history of delinquent indebtedness, the Board concludes that the Judge’s findings are reasonably supported by record evidence. Thus, any fact-finding errors are harmless.

Applicant asserts that she has been diligent in remedying her indebtedness and has shown a willingness to resolve her debts. Her statements do not establish error on the part of the Judge.

The presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. *See, e.g.*, ISCR Case No. 06-25157 at 2 (App. Bd. Apr. 4, 2008). As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. *See, e.g.*, ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). A party’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Applicant’s appeal brief essentially argues for an alternate interpretation of the record evidence.

In this case, the gravamen of the Judge’s decision was that Applicant had a lengthy history of substantial delinquent debt, which she exercised poor judgment in incurring, and there was little evidence offered to satisfy Applicant’s burden of showing that she was addressing her debts in a responsible manner. Applicant has not demonstrated that the Judge erred when he weighed the mitigating evidence mitigating against the seriousness of the disqualifying conduct.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge’s decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Therefore, the Judge’s ultimate unfavorable security clearance decision is sustainable.

¹Applicant’s brief was accompanied by numerous documents, many of which were also not part of the record below.

Order

The decision of the Judge is AFFIRMED.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board